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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,175	04/16/2007	Mamoru Omuta	HO-04PCT	6815
40570	7590	12/23/2009	EXAMINER	
FRIEDRICH KUEFFNER 317 MADISON AVENUE, SUITE 910 NEW YORK, NY 10017			GORDON, STEPHEN T	
			ART UNIT	PAPER NUMBER
			3612	
			MAIL DATE	DELIVERY MODE
			12/23/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/575,175

**Applicant(s)**

OMUTA, MAMORU

**Examiner**

/Stephen Gordon/

**Art Unit**

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-34 is/are pending in the application.
- 4a) Of the above claim(s) 24,25,32 and 33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-23,26-31 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 April 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 1/27/09 & 6/25/07
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

#### DETAILED ACTION

1. Claims 24-25 and 32-33 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention. Election was made **without** traverse in the reply filed on 2/7/09.
2. It is requested that applicant cancel at least non-elected claims 24-25 and 32 in response to this action to facilitate the issue process if the application is ultimately allowed.
3. Figure 13 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
4. The disclosure is objected to because of the following informalities: page 22 – line 1, "rod 7" should be --rod 17--.

Appropriate correction is required.

5. Claims 19-23, 26-31, and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 19, in general the claim is very confusing and not understood. The phrase “, together...thereon” bridging lines 2 and 3 is generally awkward and confusing. “the inside upper part” in lines 4-5 lacks clear antecedent basis. Lines 8-10 are very confusing. The term “the portal shape” is not understood and lacks antecedent support. Additionally, “the both sides” is confusing and lacks clear antecedent basis. Lines 11-16 are very confusing and not understood. Additionally, “the position” in line 11, “each lateral end” in line 12, “the upper part” in line 12, “the top of said push-up rod” in line 13, “the right and left corners” of line 14, “the diagonally upward direction” are generally confusing and lack clear antecedent basis.

Claim 21, lines 2 and 3 are confusing in that they appear to duplicate language included in the base claim. The term “the right and left insides of the container lacks clear antecedent basis.

Claim 22, “the top of the lateral bracing member”, “the inside concave section”, and “the corrugated side panel” are confusing and lack clear antecedent support.

Claim 23, “the inclined state” is confusing and lacks clear antecedent basis.

Claim 26, the claim is very confusing – especially as it pertains to the multiple racks. The terms “the front end”, “the rear end”, “the racks”, “the longitudinally adjacent freight rack”, “said rubber damper”, “the front end of the foremost rack”, “the front wall”, “the rear end”, “the backmost rack”, and “the entrance door” are confusing and lack clear antecedent basis.

Claim 27, the claim is very confusing – especially as it pertains to the multiple racks. The terms “said freight racks”, “the rear end of the base member”, the back of the front

end", "the rear part of the base member", and "the base members" are generally confusing and lack clear antecedent basis.

Claim 30, "the rear part", "the lower part", "the rear end of the inclined support member", "the upper surface", and "the fork " (note a fork truck is not limited to a single fork per se) lack clear antecedent basis.

Claim 31, "the fork" and "the basis" lack clear antecedent basis. Additionally, "up to the basis" is confusing and not understood.

6. The failure to apply the prior art to claims 19-23, 26-31, and 34 should not be construed as an indication of allowable subject matter. Because these claims so seriously fails to meet the requirements of 35USC112 – second paragraph for the reasons stated above, it is not possible at this time to apply the prior art to the claims in deciding patentability without disregarding portions of the express wording of the claims and thus resorting to speculation and conjecture as to the particular invention defined therein. See Ex parte Lyell, 17 USPQ2d 1548, 1552.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (571) 272-6661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen Gordon/  
Primary Examiner  
Art Unit 3612

stg